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Subject: Patent Application 09/970,655; Attorney Docket AUS920010938US1

Sir:

Attached is an Appeal Brief in support of the pending appeal in the subject patent application.

Respectfully submitted,

Robert V. Wilder
Reg. No. 26,352
Attorney for Applicant

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Attorney Docket No. AUS920010938US1

IN RE APPLICATION OF:

Viktors Berstis

Serial No. 09/970,655

Filed: October 4, 2001

For: Extracting Information
From Software

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Examiner: Chuck O. Kendall

Art Unit: 2192

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in support of the Appeal in the above-identified application.

CERTIFICATE OF MAILING
37 CFR 1.8(a)

I hereby certify that this correspondence is being transmitted by fax to Group Fax Number 571-273-8300, addressed to "Honorable Commissioner For Patents, PO Box 1450, Alexandria, Virginia 22313-1450", on the date set forth below:

July 31, 2007

Date

/ Robert V. Wilder/

Robert V. Wilder
Signature

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<p>I. With regard to the rejection of claims 1-24 under 35 USC 103(a) as being unpatentable over Price in view of Brody, it is respectfully submitted that there is no suggestion in either reference for the proposed combination and even the proposed combination cannot render the present invention obvious since even the hypothetical combination of references fails to suggest, and even teaches away from, several of the recited features of the noted claims.</p>	
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78 REAL PARTY IN INTEREST
79

80 The present application is assigned to International Business
81 Machines Corporation, the real party in interest.
82
83

84 RELATED APPEALS AND INTERFERENCES
85

86 There are no related Appeals or Interferences currently pending.
87
88

89 STATUS OF THE CLAIMS
90

91 Claims 1-24 are pending and stand finally rejected by the
92 Examiner as noted in the Final Office Action mailed April 9,
93 2007. The rejection of claims 1-24 is hereby being appealed.
94
95

96 STATUS OF AMENDMENTS
97

98 No Amendments have been filed subsequent to the Final Rejection
99 which was mailed on 4/9/07.
100
101

102 SUMMARY OF THE CLAIMED SUBJECT MATTER
103

104 The subject patent application includes independent claims 1, 16
105 and 24, and the remaining claims ultimately depend from and

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include all of the limitations of one of the independent claims. Claim 1 recites a method embodying the present invention, claim 16 recites a medium embodying the present invention and claim 24 recites a network embodying the present invention. A concise explanation of the claimed subject matter is defined in each of the independent claims 1, 16 and 24, which, along with exemplary specification and drawing references, is set forth below.

1. A method for extracting identification information from a software package (*e.g.*, *inter alia*, Figure 5 and Page 11, line 22, to page 12, line 23), said software package including a number of executable software modules (Figure 6, Program Modules 601, page 12 line 25 to page 13, line 26 and 814 Figure 8) organized in a manner (*e.g.*, *inter alia*, Linked Program Modules 603, Figure 6) determined by said identification information (*e.g.*, *inter alia*, Figure 5), said method comprising:

determining an organization of said executable software modules within said software package (*e.g.*, *inter alia*, 811, 813 and 814 Figure 8); and

extracting (*e.g.*, *inter alia*, 815 Figure 8) said identification information (*e.g.*, *inter alia*, Figure 5 and 605 Figure 6) from said organization of said executable software modules (*e.g.*, *inter alia*, 603 Figure 6) within said software package, said organization comprising a sequence in which components of said executable software modules are linked (*e.g.*, *inter alia*, page 10, lines 9-22; Figure 6; Figure 7, #715; #814, Figure 8).

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134

135 To the combination set forth in claim 1, claim 2 adds the
136 recitation that the "executable modules are coupled together
137 (e.g., *inter alia*, 603 Figure 6) in a manner representative of
138 said identification information (e.g., *inter alia*, Figure 5 and
139 605 Figure 6).

140

141 To the combination set forth in claim 2, claim 3 adds the
142 recitation that said executable software modules are coupled
143 together by compiling (e.g., *inter alia*, p9, 127 et seq., p10,
144 127 & 32 et seq., & p11, 17 et seq.) said software modules into
145 an executable form of said software package.

146

147 To the combination set forth in claim 2, claim 4 adds the
148 recitation that said executable software modules are coupled
149 together by linking (e.g., *inter alia*, Abstract, line 15; p9,
150 line 27, 31; p10, line 32; p11, 7; p12, lines 7, 19 and 22 et
151 seq.) said executable software modules into an executable form of
152 said software package.

153

154 To the combination set forth in claim 1, claim 5 adds the
155 recitations of analyzing said software package to determine an
156 organizational relationship among said executable software
157 modules; and determining a binary series (e.g., *inter alia*,
158 Abstract lines 11-13; p3, line 16 et seq.; p11, line 16 et seq.;
159 p11, line 31 et seq.) from said organizational relationship of
160 said executable software modules.

161

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162 To the combination set forth in claim 1, claim 6 adds the
163 recitation of transmitting said software package over a network
164 (*e.g., inter alia, Abstract line 16 et seq.*) to a requesting
165 terminal, said requesting terminal being enabled to extract said
166 identification information from said organization of said
167 executable software modules of said software package.

168
169 To the combination set forth in claim 6, claim 7 adds the
170 recitation that said software package is transmitted from a user
171 terminal over an Internet network (*e.g., inter alia, p2, lines*
172 *15, 29; Figure 4, 405*) to a server (*e.g. inter alia, Figure 4,*
173 *407*).

174
175 To the combination set forth in claim 6, claim 8 adds the
176 recitation that said user terminal is a wireless device (*e.g.,*
177 *inter alia, p5, line 22 et seq.*).

178
179 To the combination set forth in claim 6, claim 9 adds the
180 recitation that said user terminal is a personal computer system
181 (*e.g., inter alia, p5, line 22 et seq.*).

182
183 To the combination set forth in claim 1, claim 10 adds the
184 recitation that said identification information includes an
185 identification of a user (*e.g., inter alia, p13, line 21 et seq.*)
186 of said software package.

187
188 To the combination set forth in claim 1, claim 11 adds the
189 recitation that said identification information includes an

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190 identifying number (e.g., *inter alia*, p13, line 21 et seq.)

191 related to said software package.

192

193 To the combination set forth in claim 11, claim 12 adds the
194 recitation that said identification information further includes
195 an identification of a user (e.g., *inter alia*, p13, line 20 et
196 seq.) of said software package.

197

198 To the combination set forth in claim 1, claim 13 adds the
199 recitation that said executable software modules are organized in
200 a series of sets (e.g., *inter alia*, p13, line 27 et seq.) of
201 executable software modules, each of said sets comprising a
202 predetermined number of executable software modules.

203

204 To the combination set forth in claim 13, claim 14 adds the
205 recitation that said series of sets corresponds to a binary
206 series, (e.g., *inter alia*, Abstract lines 11-13; p3, line 16 et
207 seq.; p11, line 16 et seq.; p11, line 31 et seq.) and each of
208 said sets comprises first and second executable software modules,
209 said binary series being determined in accordance with a sequence
210 of said first and second executable software modules within said
211 sets of said executable software modules.

212

213 To the combination set forth in claim 13, claim 15 adds the
214 recitation that said series of sets is organized in other than a
215 binary format (e.g., *inter alia*, p9, line 1 et seq.; p11, line 24
216 et seq.), each of said sets comprising a number of said
217 executable software modules other than two, said identification

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218 information being determined according to an order in which said
219 number of executable software modules are sequenced within said
220 sets of executable software modules.

221

222 The drawing and specification references of independent claim 16
223 correspond to the similar elements as identified above for
224 independent claim 1.

225

226 16. A medium including machine readable coded indicia, said
227 machine readable coded indicia being selectively operable in
228 combination with a processing circuit for extracting embedded
229 identification information from a software package (*e.g., inter*
230 *alia, Figure 5 and Page 11, line 22, to page 12, line 23*), by
231 determining an organization of executable software modules
232 (*Figure 6, Program Modules 601, page 12 line 25 to page 13, line*
233 *26 and 814 Figure 8*) within said software package, said
234 organization comprising a sequence in which components of said
235 executable software modules are linked (*e.g., inter alia, page*
236 *10, lines 9-22; Figure 6; Figure 7, #715; #814, Figure 8*),
237 wherein relationships between said executable software modules
238 (*e.g., inter alia, Linked Program Modules 603, Figure 6*) are
239 representative of said identification information (*e.g., inter*
240 *alia, Figure 5*), embedded within said software package.

241

242 To the combination set forth in claim 16, claim 17 adds the
243 recitation that said medium is an optically encoded disk (*e.g.,*
244 *inter alia, 222 Figure 2*).

245

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246 To the combination set forth in claim 16, claim 18, adds the
247 recitation that said medium is a magnetically encoded magnetic
248 diskette (*e.g., inter alia, 219 Figure 2*).
249
250 To the combination set forth in claim 16, claim 19 adds the
251 recitation that said software package resides on a storage device
252 (*e.g., inter alia, 218 Figure 2*) within a computer device.
253
254 To the combination set forth in claim 16, claim 20 adds the
255 recitation that the software package resides on a memory device
256 (*e.g., inter alia, 207 Figure 2*) within a computer device.
257
258 To the combination set forth in claim 16, claim 21 adds the
259 recitation that said embedded identification information includes
260 an identification of a user (*e.g., inter alia, p13, line 20 et*
261 *seq.*) of said software package.
262
263 To the combination set forth in claim 16, claim 22 adds the
264 recitation that said embedded identification information includes
265 an identifying number (*e.g., inter alia, p13, line 21 et seq.*)
266 related to said software package.
267
268 To the combination set forth in claim 22, claim 23 adds the
269 recitation that said embedded identification information further
270 includes an identification of a user (*e.g., inter alia, p13, line*
271 *20 et seq.*) of said software package.
272
273 The drawing and specification references of independent claim 24

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correspond to the similar elements as identified above for independent claims 1 and 16.

24. A network arranged to enable extracting of organizational information of an organization of executable software modules (Figure 6, Program Modules 601, page 12 line 25 to page 13, line 26 and 814 Figure 8) within a software package (e.g., *inter alia*, Figure 5 and Page 11, line 22, to page 12, line 23), at a user terminal and transferring said organizational information to a server for use in deriving identification information embedded within said organizational information, said network comprising:

a user terminal (e.g., *inter alia*, 401, Figure 4) at which said software package resides;

a server (e.g., *inter alia*, 407, Figure 4); and

an interconnection (e.g., *inter alia*, 403 and 405, Figure 4) between said server and said user terminal, said user terminal being responsive to a request to upload said organizational information of said software package for determining said organizational information and transferring said organizational information to said server (e.g., *inter alia*, 811 and 813 Figure 8), said organizational information comprising a sequence in which components of said executable software modules are linked (e.g., *inter alia*, page 10, lines 9-22; Figure 6; Figure 7, #715; #814, Figure 8).

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302 **GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

303
304 I. Claims 1-24 were rejected under 35 USC 103(a) as being
305 unpatentable over Price (U.S. Patent 6,738,932 B1) in view of
306 Brody (US 2001/0051928 A1).

307
308 **ARGUMENT**

309
310 I. With regard to the rejection of claims 1-24 under 35 USC
311 103(a) as being unpatentable over Price in view of Brody, it is
312 respectfully submitted that there is no suggestion in either
313 reference for the proposed combination and even the proposed
314 combination cannot render the present invention obvious since
315 even the hypothetical combination of references fails to suggest,
316 and even teaches away from, several of the recited features of
317 the noted claims.

318
319 More specifically, it is noted that the present invention
320 provides a means by which software identification information,
321 such as a user name or software package serial number, is
322 **extracted from a software package** by determining the manner in
323 which **executable software modules are organized** in the software
324 package wherein the organization comprises **a sequence in which**
325 **components of executable software modules are linked**. With the
326 present invention, user identification or the serial number
327 identification, for example, of a particular software package,
328 may be ascertained **by the manner in which the software package**
329 **executable modules are arranged**. In one example, the

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330 identification information is represented in binary format, i.e.
331 a series of "1's" and "0s", and that identification information
332 is applied to the sequencing of executable software modules in a
333 software package such that one sequence of executable software
334 modules represents a binary "one" while another sequence of
335 executable software modules represents a binary "zero". Thus by
336 determining the relative sequencing of the executable software
337 modules (rather than, for example, accessing a data file), one is
338 enabled to re-assemble the binary identification information
339 which is embedded into the software package and determine, for
340 example, the licensed owner of the software package and/or the
341 serial number of the software package. Formats other than a
342 binary format may also be implemented.

343
344 As stated in applicant's specification, "instead of including
345 user information in a separate code segment of the download, the
346 transaction information is included in the structure or
347 organization of the downloaded code or data. Every software
348 package consists of code blocks, data areas, subroutines, methods
349 and other such subcomponents. After a requesting user has
350 furnished the requested information and agreed to the terms of a
351 license agreement, the website will compile and link the various
352 components of the software package together to form an executable
353 module which is then downloaded to the user. Normally, when the
354 various components of the software package are linked together to
355 form the executable module, the exact order of placement or
356 sequence of the components is usually not critical for the proper

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357 execution of the software. In accordance with the present
358 invention however, the ordering and/or sequence of those
359 components and/or sub-components is used to encode selected
360 transaction information such that this encoded information can
361 later be extracted from the licensed software and copies of the
362 licensed software in the downloaded executable form. Thus, the
363 ordering or sequence of the software package components is used
364 to encode a serial number for the licensed software package as
365 well as other useful information. The embedded information can be
366 checked at a later time to determine if the software or data have
367 been tampered with or if the usage pattern leads to suspicions
368 about illegal copying. The embedded information can then be used
369 to track down the source of the illegal copies".

370
371 With specific regard to the rejection of claims 1-24 under USC
372 103(a) as being unpatentable over Price in view of Brody, it is
373 noted that the cited Price reference discloses a method and
374 system for identifying software revisions from memory images
375 which define a state of software execution at time of system
376 failure in order to determine a cause of the failure. As noted in
377 column 2, lines 50-65 of Price, the identification system
378 includes an identification mechanism configured to process memory
379 images from the computer system to determine the size in bytes of
380 executables in the memory image. Identification of the software
381 version, according to the cited reference, is achieved by
382 comparing, at each matching offset, the lengths of executable
383 text segments with the executable in the memory image. Price
384 simply does not disclose or even suggest extracting any

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385 information from sequence in which components of said executable
386 software modules are linked as is clearly claimed in the
387 independent claims 1, 16 and 24. Price's system and the system of
388 the present application are incompatible and teach in different
389 directions; the system of Price would be unable to accomplish the
390 objective of the present invention and the system of the present
391 application would be unable to accomplish the objective of Price.

392
393 Brody, which was cited for the first time in the Final Office
394 Action mailed 4/9/2007, discloses protecting software by
395 personalization where the personalization is incorporated into
396 the software build and is delivered to the authorized user with
397 embedded pre-existing personal information. Brody does not,
398 however, disclose, teach or even suggest **embedding information** by
399 the sequence in which components of executable modules are
400 linked. Instead, Brody discloses the function of **producing a**
401 **separate personal information module** to include personal
402 information of the user. This is specifically **what is made**
403 **unnecessary** by applicant's invention. By **embedding information** in
404 the sequence in which components of executable modules are
405 linked, there is no need to create a separate module as is taught
406 **by Brody**. Thus, it is submitted that rather than suggesting
407 applicant's invention, Brody actually **teaches away from** the
408 applicant's invention, and cannot therefore be said to render the
409 present invention obvious, either taken alone or in a forced and
410 un-suggested combination with Price.

411
412 Moreover, there is no suggestion or reason referenced in either

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413 Price or Brody for the forced hypothetical combination of Price
414 and Brody, and, in fact, each reference accomplishes a different
415 function in a different manner. Price teaches a method and system
416 for identifying software revisions from memory images which
417 define a **state of software execution at time of system failure** in
418 order to determine a cause of the failure while Brody teaches a
419 system in which personalization is incorporated into the software
420 build by creating a separate personalization module and not by
421 the **sequence in which executable modules are linked** as is
422 disclosed and claimed by applicant. The Brody system does not and
423 cannot not function to identify a state of software execution at
424 time of system failure in order to determine a cause of the
425 failure as is the objective of Price, and the Price system does
426 not and cannot produce a separate personalization module (which
427 has nothing to do with a state of software execution) as is
428 taught by Brody. Thus there is no apparent or referenced reason
429 to suggest that the two applied references could be combined for
430 any reason whatsoever. Further, since neither Price nor Brody
431 discloses or even suggests, *inter alia*, "extracting said
432 identification information from said organization of said
433 executable software modules within said software package, said
434 organization comprising a sequence in which components of said
435 executable software modules are linked", it is submitted that
436 even the combination of Price and Brody fails to render the
437 present invention obvious since not even the forced combination
438 of the two references even suggests the extracting function as is
439 clearly set forth in all of the independent claims 1, 16 and 24.
440

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Therefore, for the reasons stated above, it is submitted that there is no suggestion or reason in either reference to combine the Price and Brody references. Further, it is submitted that even if there were some suggestion for the hypothetical combination, that, for the reasons stated above, independent claims 1, 16 and 24 are allowable under 35 USC 103(a) over the hypothetical Price/Brody combination. Moreover, since claims 2-15 and 17-23 ultimately depend from and include all of the limitations of claim 1 and claim 16, respectively, and include even further limitations as specified in each of the dependent claims, it is also submitted that claims 2-15 and 17-23 are also allowable under 35 USC 103(a) over the hypothetical forced combination of Price and Brody.

CONCLUSION

For the reasons stated above, applicant urges the Board to conclude that the rejection of claims 1-24 under 35 USC 103(a) as being unpatentable over Price in view of Brody is not well-founded and should be reversed.

Please charge IBM Corporation Deposit Account No. 09-0447 in the amount of \$500.00 for submission of a Brief in Support of Appeal. No additional fee or extension of time is believed to be required; however, in the event an additional fee or extension of time is required, please charge the fee, as well as any other fee necessary to further the prosecution of this application, to the

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469 above-identified deposit account.

470

471 Respectfully submitted,

472

473 */Robert V. Wilder/*

474

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CLAIMS APPENDIX

1. A method for extracting identification information from a software package, said software package including a number of executable software modules organized in a manner determined by said identification information, said method comprising:
- determining an organization of said executable software modules within said software package; and
- extracting said identification information from said organization of said executable software modules within said software package, said organization comprising a sequence in which components of said executable software modules are linked.
2. The method as set forth in claim 1 wherein said executable software modules are coupled together in a manner representative of said identification information.
3. The method as set forth in claim 2 wherein said executable software modules are coupled together by compiling said software modules into an executable form of said software package.
4. The method as set forth in claim 2 wherein said executable software modules are coupled together by linking said executable software modules into an executable form of said software package.

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508 5. The method as set forth in claim 1 and further including:
509
510 analyzing said software package to determine an organizational
511 relationship among said executable software modules; and
512
513 determining a binary series from said organizational relationship
514 of said executable software modules.
515
516 6. The method as set forth in claim 1 and further including
517 transmitting said software package over a network to a requesting
518 terminal, said requesting terminal being enabled to extract said
519 identification information from said organization of said
520 executable software modules of said software package.
521
522 7. The method as set forth in claim 6 wherein said software
523 package is transmitted from a user terminal over an Internet
524 network to a server.
525
526 8. The method as set forth in claim 6 wherein said user terminal
527 is a wireless device.
528
529 9. The method as set forth in claim 6 wherein said user terminal
530 is a personal computer system.
531
532 10. The method as set forth in claim 1 wherein said
533 identification information includes an identification of a user
534 of said software package.
535

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536 11. The method as set forth in claim 1 wherein said
537 identification information includes an identifying number related
538 to said software package.
539

540 12. The method as set forth in claim 11 wherein said
541 identification information further includes an identification of
542 a user of said software package.
543

544 13. The method as set forth in claim 1 wherein said executable
545 software modules are organized in a series of sets of executable
546 software modules, each of said sets comprising a predetermined
547 number of executable software modules.
548

549 14. The method as set forth in claim 13 wherein said series of
550 sets corresponds to a binary series, and each of said sets
551 comprises first and second executable software modules, said
552 binary series being determined in accordance with a sequence of
553 said first and second executable software modules within said
554 sets of said executable software modules.
555

556 15. The method as set forth in claim 13 wherein said series of
557 sets is organized in other than a binary format, each of said
558 sets comprising a number of said executable software modules
559 other than two, said identification information being determined
560 according to an order in which said number of executable software
561 modules are sequenced within said sets of executable software
562 modules.
563

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564 16. A medium including machine readable coded indicia, said
565 machine readable coded indicia being selectively operable in
566 combination with a processing circuit for extracting embedded
567 identification information from a software package by determining
568 an organization of executable software modules within said
569 software package, said organization comprising a sequence in
570 which components of said executable software modules are linked,
571 wherein relationships between said executable software modules
572 are representative of said identification information embedded
573 within said software package.

574

575 17. The medium as set forth in claim 16 wherein said medium is an
576 optically encoded disk.

577

578 18. The medium as set forth in claim 16 wherein said medium is a
579 magnetically encoded magnetic diskette.

580

581 19. The medium as set forth in claim 16 wherein said software
582 package resides on a storage device within a computer device.

583

584 20. The medium as set forth in claim 16 wherein software package
585 resides on a memory device within a computer device.

586

587 21. The medium as set forth in claim 16 wherein said embedded
588 identification information includes an identification of a user
589 of said software package.

590

591 22. The medium as set forth in claim 16 wherein said embedded

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592 identification information includes an identifying number related
593 to said software package.

594
595 23. The medium as set forth in claim 22 wherein said embedded
596 identification information further includes an identification of
597 a user of said software package.

598
599 24. A network arranged to enable extracting of organizational
600 information of an organization of executable software modules
601 within a software package at a user terminal and transferring
602 said organizational information to a server for use in deriving
603 identification information embedded within said organizational
604 information, said network comprising:

605
606 a user terminal at which said software package resides;

607
608 a server; and

609
610 an interconnection between said server and said user terminal,
611 said user terminal being responsive to a request to upload said
612 organizational information of said software package for
613 determining said organizational information and transferring said
614 organizational information to said server, said organizational
615 information comprising a sequence in which components of said
616 executable software modules are linked.

617

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618

EVIDENCE APPENDIX

619

620 There are no items in this Appendix.

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621

RELATED PROCEEDINGS APPENDIX

622

623 There are no items in this Appendix.

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